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MICROSOFT CORPORATION
11

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 MICROSOFT CORPORATION, a
Washington corporation,

15 Plaintiff,

16 v.

17 INTRAX GROUP, INC., d/b/a, SURPLUS
18 COMPUTERS, a California corporation;
MICHAEL MAK, an individual; and JOHN
19 DOES 1-5,

20 Defendants.

No. 07-CV-01840-CW

REPLY DECLARATION OF TAMARA
JOHNSON IN SUPPORT OF PLAINTIFF
MICROSOFT CORPORATION'S
MOTION FOR SUMMARY JUDGMENT

21
22 I, Tamara Johnson, declare as follows:

23 1. I am employed as a Senior Manager, Piracy Prevention by plaintiff Microsoft
24 Corporation ("Microsoft") and have been employed by Microsoft since 2002. I make this
25 Declaration upon personal knowledge and, if called to testify, could and would testify
26 competently to the facts set forth herein.
27

1 **A. Professional Experience**

2 2. One of my primary areas of responsibility at Microsoft is investigating piracy
3 involving Microsoft products. In that capacity, I work with the Microsoft Legal and
4 Corporate Affairs (LCA) group, federal and state law enforcement agencies, and outside civil
5 piracy counsel. In connection with my work, I have assisted in the execution of software
6 seizures, the inventorying of counterfeit and infringing Microsoft products, and the analysis of
7 business and financial records of individuals and companies engaged in software piracy. I
8 routinely analyze data from systems preparing proactive intelligence reports on possible
9 targets responsible for piracy of Microsoft products.

10 3. Prior to my current role in Microsoft's Legal Department, I was an investigator
11 in the Financial Integrity Unit, Microsoft's financial fraud unit. In that capacity, I conducted
12 investigations involving financial matters both internal and external to Microsoft. Prior to
13 joining Microsoft in 2002, I was a consultant in business intelligence and worked as a Crime
14 Analyst at the Redmond Police Department in Redmond, Washington. I am a Certified Fraud
15 Examiner and have a Master's Degree in Criminal Justice.

16 4. I will receive no compensation in connection with my work in this matter other
17 than my normal salary. Based on my employment duties and responsibilities and in the
18 ordinary course of Microsoft's business, I have gained and have personal knowledge of the
19 facts set forth below or have reason to believe them to be true based upon records kept in the
20 ordinary course of business.

21 **B. Microsoft Student Media Software Distributed By Defendants**

22 5. As discussed in the declarations of my colleagues Miles Hawkes and Enoch
23 Remick, test purchases revealed that the Surplus Computers Defendants repeatedly distributed
24 Microsoft Student Media software that had been licensed for exclusive distribution to and use
25 by certain qualified educational users abroad. *See* Hawkes Decl. (Dkt. # 31) ¶¶ 8-13; Remick
26 Decl. (Dkt. # 32) ¶¶ 5-9.

27 6. The Microsoft Student Media software the Surplus Computers Defendants
28

1 distributed, as with all Microsoft Student Media software, was marked with the following
2 copyright warning:

3 All use subject to volume license agreement. Do not make illegal copies of
4 this disc. **Not for retail or OEM Distribution. Not for resale.**

5 *See also* Remick Decl. Ex. 1.

6 7. As stated on the discs, use of Student Media software requires and is governed
7 by a valid volume license agreement. As an example of such a volume license agreement, I
8 traced a certain unit of software distributed by the Surplus Computers Defendants to a
9 particular volume license agreement, as described below.

10 8. As described more fully in Miles Hawkes' Declaration, on or about April 10,
11 2006, the Surplus Computers Defendants shipped one unit of Microsoft Office 2003 Standard
12 Student Media software to an investigator. *See* Hawkes Decl. ¶ 8. Based upon a Work Order
13 number (WO1070578) present on the software and records kept in the ordinary course of
14 business, I know that this software was distributed pursuant to a volume license agreement
15 between Microsoft Ireland Operations Limited, a Microsoft Corporation affiliate, and the
16 Republic of Egypt, specifically the Egyptian Ministry of Education. A true and correct copy
17 of that agreement between Microsoft Ireland Operations Limited and the Republic of Egypt
18 (the "Egyptian Ministry of Education Agreement") is attached hereto as Exhibit 1. Dr. Salah
19 Amin Elewa, the Technology and Development Center Manager for the Egyptian Ministry of
20 Education, entered the agreement on behalf of the Republic of Egypt.

21 9. Pursuant to the Egyptian Ministry of Education Agreement, the Ministry of
22 Education or its "enrolled affiliates" (qualified educational users owned or controlled by the
23 Ministry) may purchase licenses for their use of Microsoft software or the use of Microsoft
24 software by "eligible education customers." Eligible education users of this special software
25 are limited to the following:

- 26 • Educational institutions;
- 27 • Administrative offices of an educational institution;

- Teaching hospitals or medical training schools;
- Public libraries;
- Public museums;
- Public research establishments; and
- Charitable organizations which operates on a not-for profit basis and whose aim is
 - the relief of poverty;
 - the advancement of education;
 - the advancement of social and community welfare;
 - the advancement of culture; or
 - the advancement of the natural environment.

Egyptian Ministry of Education Agreement Schedule A.

10. Use of Microsoft products licensed under the Egyptian Ministry of Education Agreement is restricted to these eligible education customers:

Products licensed under this agreement may be used only by and for the benefit of an eligible education customer. Client Access Licenses your enrolled affiliates acquire solely to enable their students to access their servers are, for purposes of this restriction, deemed to be “used by and for the benefit of an eligible education customer.” Licenses obtained under this agreement may not be transferred, sublicensed, rented, leased or loaned to any person or entity that is not an eligible education customer.

Egyptian Ministry of Education Agreement § 6. Additionally, no ownership rights in any licensed Microsoft product are transferred pursuant to the Egyptian Ministry of Education Agreement. *Id.* § 5.

11. Pursuant to the Egyptian Ministry of Education Agreement, once an affiliate of the Ministry is enrolled, “the enrolled affiliate will receive master copies of products it intends to license and may run as many copies as it wishes during the term of its enrollment, provided it places monthly orders for those copies.” Ministry of Education Agreement § 2. The per license fee paid by an enrolled affiliate for Office 2003 was approximately \$20. One of the ways by which Microsoft provides Microsoft software to enrolled affiliates is to permit the enrolled affiliates to download Microsoft software from a Microsoft Authorized Education

1 Reseller ("AER") via the Internet. However, particularly in the developing world, Internet
2 bandwidth limitations may make downloading software difficult. Microsoft therefore also
3 offers Microsoft software on Student Media. Such Student Media software is offered at prices
4 vastly below the cost of fully packaged retail product. The Microsoft Office 2003 Student
5 Media software the Surplus Computers Defendants distributed to an investigator on or about
6 April 10, 2006, was initially distributed by an AER under the Ministry of Education
7 Agreement for a negligible \$3.00 per copy. This cost is in addition to the per license fee
8 described above.

9 12. As described in greater detail in Enoch Remick's Declaration, Microsoft
10 Student Media software is distributed through three special academic volume licensing
11 programs. *See* Remick Decl. ¶¶ 5-7. All of the Student Media software distributed by the
12 Surplus Computers Defendants would have been subject to the terms of those volume
13 licensing programs, all of which have restrictions on distribution and use similar to those
14 present in the Ministry of Education Agreement.

15
16 I declare under penalty of perjury under the laws of the United States of America that
17 the foregoing is true and correct.

18
19 Executed this 25th day of August, 2008.

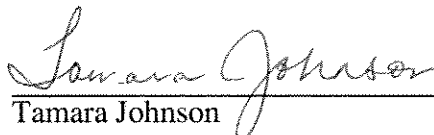
20
21 
22 Tamara Johnson

EXHIBIT 1

MICROSOFT SELECT & EA TEAM DOCUMENT CHECKLIST

Filing Reference Number :

(Agreement Number)

16.560146

PO number :

Amendment Number :

(Unique in MSI)

End Customer Name (Only to be populated for HPC's and documents other than agreement) Please use block capitals

Ministry of Education

Document Type

Agreement

Amendment

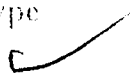
Order

Side Letter

Adjustment

Internal (only to be used for emails relating to Agreement/Order which have been previously filed)

Please tick relevant type



Select Header Sheet/ Checklist

Customer Name <i>Ministry of Education</i>	
IT# <i>2-722860774</i>	
MBA#	Sales Location <i>Egypt</i>
Select Agreement # <i>16560146</i>	Logged by <i>Tina</i>
Select Enrollment #	Validated by <i>Steven</i>
Date received by SUB	Entered by <i>Steven</i>
Date dispatched by SUB	Audited by <i>[Signature]</i>
Reviewed by:	Date and time of log <i>12/06/2006</i>
Standard Y <input checked="" type="checkbox"/>	Comments <i>SB - Agreeem</i>
N.B. Non-standard agreements must have special terms attached. Otherwise there is a risk of agreement getting processed as normal terms & conditions.	

Logging

IT Number	<input checked="" type="checkbox"/>	MBA	<input type="checkbox"/>
Stamped with today's date	<input checked="" type="checkbox"/>	Agreement	<input checked="" type="checkbox"/>
Document type filled in	<input checked="" type="checkbox"/>	Enrollment	<input type="checkbox"/>
Signed	<input checked="" type="checkbox"/>		

Validation Details

Start Date (if not Today)	Select Amendments attached <input type="checkbox"/>
Contract type: Corp <input type="checkbox"/> Academic <input type="checkbox"/> Gov <input checked="" type="checkbox"/> Student <input type="checkbox"/>	Select Order attached <input type="checkbox"/>
Software Assurance Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Is contract valid? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Validation Notes:	
PCN : 5003057 32414033 66220403 6820932 32341523	

Entry

	Primary	Lar/Outsourcer/indirect		
Company & Contact	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Address & Postal Code	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Country	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Email address	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Telephone/Fax number	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Customer Signature	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Customer Signature date	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other Information				
Currency	<input type="checkbox"/>	MS Account Manager <input type="checkbox"/>		
CDs/Product groups	<input type="checkbox"/>	PCN Number <input type="checkbox"/>		

Audit

Asset number, name, org	<input checked="" type="checkbox"/>	MOPET Approval
Reassigned to BPO	<input checked="" type="checkbox"/>	All Amendments updated to processed
Workflow status	<input checked="" type="checkbox"/>	Amendment tab updated with Amendment

Microsoft Academic Select License**Microsoft Academic Select Agreement**

Microsoft Academic Select Agreement
number
Microsoft affiliate to complete

16,60146

Previous Academic Select
Agreement number
Reseller to complete

16S60053

Previous Agreement
expiration date
Reseller to complete

March 2005

This Microsoft Academic Select Agreement is entered into between the following entities signing as of the effective date identified below.

This agreement consists of (1) this cover page, (2) the contact information page(s) (3) the attached terms and conditions, (4) the attached Academic Select Volume Forecast Form, (5) the Product List, (6) the product use rights applicable to products licensed under this agreement, (7) any enrollment entered into under this agreement and (8) the eligibility criteria for the Academic Select License program as set forth in Schedule A to this agreement.

Effective date. The effective date of this agreement will be either the effective date of the first enrollment or the date we sign this agreement whichever is earlier.

By signing below, the parties agree to be bound by the terms of this agreement.

Customer	Contracting Microsoft Affiliate	
Name of Entity* Ministry of Education	Microsoft Ireland Operations Limited	
Signature* <i>Salah Amin Elewa</i>	Signature	<i>[Signature]</i>
Printed Name* Dr. Salah Amin Elewa	Printed Name	Microsoft®
Printed Title* Technology & Development Center Manager	Printed Title	Ireland Operations Ltd.
Signature Date* <i>7 June 2006</i>	Signature Date (date Microsoft affiliate countersigns)	22 JUN 2006
		Gonzalo Caro
	Effective Date (may be different than our signature date)	Licensing Specialist
	<i>01.03.06</i>	<i>13/6/2006</i>

*indicates required fields

Contact Information

Contact Information. Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The * indicates required fields. We may disclose contact information as necessary to administer this agreement.

Primary Contact Information: The customer signing on the cover page must identify an individual from inside its organization to serve as the primary contact. The contact is the default online administrator for this agreement and receives all notices unless you provide us written notice of a change. The online administrator may appoint other administrators and grant others access to online information.

Primary Contact			
Name of Entity *		Contact Name *	
Same Institution identified on Cover Page		Last Elewa First Salah	
Street Address *		Contact Email Address (required for online access) *	
12 El Falaky Street Down Town		selewa@moe.org	
City *	Postal Code *	Phone*	
Cairo		+2027959893	
Country *		Fax	
Egypt			

Notices and Online Access Contact Information: Complete this only if you want to designate a notices and online contact different than the primary contact. This contact will become the default online administrator for this agreement and receive all notices. This contact may appoint other administrators and grant others access to online information.

Notices and Online Access Contact			
<input checked="" type="checkbox"/> Same as primary contact			
Name of Entity		Contact Name	
		Last	
		First	
Street Address		Contact Email Address (required for online access)	
City	Postal Code	Phone	
Country		Fax	

Language Preference: This section designates the language in which you prefer to receive notices.

English

Contact Information

Additional Electronic Contractual Notices Contact Information: This contact will receive electronic contractual notices in addition to the notices contact. This contact is not required if you do not want an additional set of notices issued.

Electronic Contractual Notices Contact		
Name of Entity		Contact Name
		Last
		First
Street Address		Contact Email Address (required for electronic notices)
City	Postal Code	Phone
Country		Fax

Microsoft Account Manager: This section designates your Microsoft Account Manager contact.

Microsoft Account Manager Name	Microsoft Account Manager Email Address
Hani Gohary	hanig@microsoft.com

Terms and Conditions

1. Definitions.

In this agreement, "you" means the eligible education customer that has entered into this agreement with us, and "we" or "us" means the Microsoft entity that has entered into this agreement or an enrollment. In addition, the following definitions apply:

"affiliate" means (a) with regard to you, any eligible education customer that you own and/or control, that owns you and/or controls you, or that is under common ownership and/or control with you, and (b) with regard to us, any legal entity that we own, that owns us, or that is under common ownership with us;

"available" means, with respect to a product, that we have made licenses for that product available for ordering under a particular licensing program;

"control" means, for purposes of the definition of "affiliate" above and only with respect to educational institutions and their governing bodies, the right granted by law to governing bodies to exercise decision power over the administrative, financial and operational affairs of certain educational institutions;

"eligible education customer" means any qualified educational user identified in Schedule A as being eligible to license and use products under the Academic Select License program;

"enrolled affiliate" means an entity, either you or any one of your affiliates, that has entered into an enrollment under this agreement;

"enrollment" means the document that you or your affiliate submits under this agreement to sign up for the Academic Select License program;

"fix(es)" means product fixes, modifications or enhancements or their derivatives that we either release generally (such as commercial product service packs) or that we provide to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds);

"License" means any one of those offerings identified in the Product List (including standard licenses, and upgrades for desktop operating systems) that provides the right to run the version of the product for which it is ordered;

"L&SA" means a License and Software Assurance for any product ordered;

"ownership" means, for purposes of the definition of "affiliate" above, more than 50% ownership;

"product" means all commercial, free, pre-release and beta products, including online services and other web based service as described on the Product List;

"Product List" means, with respect to the Academic Select License program, the statement published by Microsoft from time to time on the World Wide Web at <http://microsoft.com/licensing/resources>, or at a successor site that we identify, which identifies the products that are or may be made available to Academic Select License program customers (which availability may vary by region) and any product-specific conditions or limitations on the acquisition of licenses for those products;

"renewal order" means the order that an enrolled affiliate submits at the beginning of any renewal term to renew Software Assurance coverage for products previously ordered under its enrollment;

"reseller" means a large account reseller authorized by us or one of our affiliates to resell licenses in an enrolled affiliate's area under this program; and

"run" or "use" means to copy, install, use, access, display, run or otherwise interact with;

"Software Assurance" means, for any underlying licensed product for which it is ordered, the right to upgrade to, and run in place of the underlying licensed product, the latest version of that product that we make available during the covered period.

2. How the Academic Select License program works.

The Academic Select License program allows eligible education customers to license our products at discount pricing based on the volume of their license purchases. You and your affiliates can

participate in this program by submitting one or more enrollments under this agreement. Once enrolled, the enrolled affiliate will receive master copies of products it intends to license and may run as many copies as it wishes during the term of its enrollment, provided it places monthly orders for those copies. We may refuse to accept an enrollment if we have a business reason for doing so. Product support is not included with the licenses under this agreement.

- a. **Price level – minimum forecast.** Each product offering is assigned a point value on the Product List and is assigned to one of the following pools: applications, systems or servers. In order for your enrolled affiliates to qualify for academic level pricing ("Education level A") and be eligible to acquire licenses from any particular pool under this agreement you must select that pool on the attached Academic Select Volume Forecast Form and represent to us that you reasonably expect your enrolled affiliates, in the aggregate, to acquire from that pool, during the initial term of this agreement, product licenses with a total point value of at least 1500 points. Your price level will be used to determine the prices we will invoice each enrolled affiliate's reseller for product licenses that enrolled affiliate orders.
- b. **Price level compliance.** On every anniversary of the effective date of this agreement, including anniversaries during any renewal term, we will review the total license acquisitions by all enrolled affiliates during the previous three years to ensure that the minimum point requirement (1500 per pool) has been met for each selected pool. For the first anniversary and second anniversary reviews, we will multiply your enrolled affiliates' actual points earned for licenses purchased under this agreement by 3 and 1.5, respectively, to derive a three year license purchase history. If the actual points earned within a pool fall below the minimum point requirement, your enrolled affiliates will no longer be allowed to acquire licenses from that pool under this agreement.
- c. **Choosing a reseller.** Each enrolled affiliate must choose and maintain a reseller authorized in the enrolled affiliate's area.

3. **How to order product licenses.**

- a. **Placing orders.** Each enrolled affiliate must submit orders for all copies of any products it or its affiliates run under its enrollment. Orders must be submitted in the month in which those copies are first run. Unless the enrolled affiliate is eligible to order just Software Assurance as described below, each order must be for either a License or L&SA. Each enrolled affiliate must submit orders to the enrolled affiliate's reseller. Price and payment terms for all licenses ordered will be determined by agreement between the enrolled affiliate and its chosen reseller.

When is the enrolled affiliate eligible to order just Software Assurance? An enrolled affiliate may order Software Assurance for copies of a product, without the need to simultaneously order a new License for those copies, in the following circumstances:

- At the beginning of a new enrollment, the enrolled affiliate may order Software Assurance for copies of products for which the enrolled affiliate has previously obtained perpetual licenses through Upgrade Advantage, Software Assurance or any similar upgrade protection, so long as (i) the new enrollment becomes effective no later than one day following the expiration of that upgrade protection, and (ii) the enrolled affiliate places its Software Assurance order at the time it submits its new enrollment to its reseller.
- During the term of its enrollment (including any renewal term), an enrolled affiliate may be eligible to order Software Assurance under its enrollment for copies of certain products licensed through retail sources or from an original equipment manufacturer (OEM), provided that the enrolled affiliate places its order within the required time frame. The Product List identifies those products that may be enrolled in Software Assurance as described in this subsection and the applicable time frame for placing an order.
- An enrolled affiliate may also order Software Assurance in any other circumstances expressly permitted in the Product List.

- An enrolled affiliate may renew Software Assurance ordered under its enrollment at the time it renews that enrollment, as described in subsection 16(d) (How to renew this agreement).

In all such cases, the enrolled affiliate must submit orders for Software Assurance for the remaining initial enrollment or renewal term.

b. Invoices and payments. The prices at which we will invoice each enrolled affiliate's reseller will be based upon the price level under this agreement. Except as described in the next paragraph, for any orders for Software Assurance or L&SA, if the enrolled affiliate elects to spread its payments over the applicable initial enrollment or renewal term rather than paying in a lump sum, it may make this election with its reseller. In such cases, we will invoice the enrolled affiliate's reseller in equal installments, the first installment upon receipt of the order and subsequent installments on each remaining anniversary of the effective date of this agreement occurring during the initial enrollment or renewal term in which the order was placed. Any amounts for Licenses only (i.e. without accompanying Software Assurance) will be invoiced to the enrolled affiliate's reseller in full upon receipt of the order.

If you are a governmental entity, you agree that neither you nor any of your affiliates will reproduce any software unless sufficient funds have been duly appropriated. Notwithstanding any right granted above or elsewhere in this agreement to spread or otherwise defer payments for licenses that may be available to non-governmental customers, you agree that, due to the uncertainty of future appropriations, any payments for product licenses (including Software Assurance and L&SA) ordered under this agreement will be made in full at the time the order is placed.

c. Reporting country of use. On all orders, the enrolled affiliate must report the countries where the enrolled affiliate or its affiliates run the products licensed under this agreement and the approximate number of copies run in each of those countries. This information is for our internal use only.

d. Divestitures. If an enrolled affiliate intends to transfer more than ten percent of its computers in connection with a divestiture of an affiliate or an operating division of the enrolled affiliate or any of its affiliates, and as a result it would like to transfer the copies of the products running on those computers prior to the expiration of its enrollment, we will work with that enrolled affiliate in good faith to arrange for acceleration of any remaining payments for those copies run pursuant to Software Assurance or L&SA and to allow for the transfer of perpetual licenses for such copies as described in section 10 (Transferring licenses). Any perpetual licenses obtained as described in this paragraph will be for the latest version of the products available as of the later of (i) the date on which the enrolled affiliate has completed payment, or (ii) the date of transfer.

4. How to confirm orders.

We will publish information about orders placed by each enrolled affiliate, including an electronic confirmation of each order, on a password-protected site on the World Wide Web at <https://licensing.microsoft.com> or a successor site that we identify. Upon our acceptance of this agreement and enrollments entered into under this agreement, the contact identified for this purpose will be provided access to this site.

5. License grant - what your enrolled affiliates are licensed to run.

At any time after its enrollment effective date, each enrolled affiliate may run for its own benefit as many copies as it chooses, of any available products it chooses, provided that it submits orders for all copies as required in subsection 3(a) (Placing orders). Each enrolled affiliate may run in place of any product version it licenses under this agreement a prior version or different language version (so long as the License, L&SA or Software Assurance for that different language version is available at the same or a lower price than the price paid for the corresponding license type for the version ordered) of the same product. If an affiliate runs copies of products under an enrolled affiliate's enrollment, those

copies are sublicensed from that enrolled affiliate subject to the terms of this agreement. These rights apply to the licenses obtained under an enrollment and are not related to any order for fulfillment of software media.

All fixes are licensed to you. Use of any fixes is defined by the product use rights for the affected product or, if the fix is not provided for a specific product, any other use terms we provide.

The ability to run current or later versions of a product licensed under this agreement could be affected by minimum system requirements or other factors (e.g., hardware or other software).

License only. An enrolled affiliate's right under this agreement to run copies of any product for which it orders only a License is temporary until the enrolled affiliate has paid for that License in full. Thereafter, the enrolled affiliate will have a perpetual license to run the number of copies ordered in the version ordered.

L&SA or Software Assurance. An enrolled affiliate's right under this agreement to run copies of any product for which it orders L&SA or Software Assurance is temporary until one of the following occurs:

- (i) the enrolled affiliate has paid all installments of the price for such coverage, and the applicable initial enrollment or renewal term during which such product licenses were ordered has expired or been renewed; or
- (ii) the enrolled affiliate is otherwise eligible for perpetual licenses.

Thereafter, the enrolled affiliate will have perpetual licenses to run the products ordered in the latest version available as of the date of expiration, renewal or termination (or any prior version), for the number of copies ordered during the applicable initial enrollment term or renewal term. In the case of early termination as provided in subsection 16(b) (Termination), if an enrolled affiliate chooses only to pay amounts due and payable as of the termination date, then the enrolled affiliate will instead have perpetual licenses for the number of copies specified in that subsection. Any perpetual licenses received through Software Assurance supersede and replace the underlying perpetual licenses for which that Software Assurance coverage was ordered.

All perpetual licenses acquired under this agreement remain subject to the terms of this agreement and the applicable product use rights.

This agreement, the applicable enrollment, the enrolled affiliate's order confirmation and any documentation evidencing transfers of licenses together with proof of payment, will be the enrolled affiliate's evidence of all licenses obtained under its enrollment as described in this agreement.

We do not transfer any ownership rights in any licensed product, and we reserve all rights not expressly granted.

6. Restrictions on use.

An enrolled affiliate may not:

- Separate the components of a product made up of multiple components by running them on different computers, by upgrading or downgrading them at different times, or by transferring them separately, except as otherwise provided in the product use rights;
- Rent, lease, lend or host products and fixes, except where we agree by separate agreement;
- Reverse engineer, de-compile or disassemble products and fixes, except to the extent expressly permitted by applicable law despite this limitation.

Products licensed under this agreement may be used only by and for the benefit of an eligible education customer. Client Access Licenses your enrolled affiliates acquire solely to enable their students to access their servers are, for purposes of this restriction, deemed to be "used by and for the benefit of an eligible education customer." Licenses obtained under this agreement may not be transferred, sublicensed, rented, leased or loaned to any person or entity that is not an eligible education customer.

Products and fixes licensed under this agreement are subject to U.S. export jurisdiction.. You must comply with all domestic and international export laws and regulations that apply to these products

and fixes. Such laws include restrictions on end-users and end-use. For additional information, see <http://www.microsoft.com/exporting/>.

7. How to know what product use rights apply.

The product use rights applicable to products licensed under each enrollment are as follows. We will provide you with a copy of the applicable product use rights, or will make them available to you either by publication on the World Wide Web at <http://microsoft.com/licensing/> or at a successor site that we identify, or by some other reasonable means. You acknowledge that you have access to the World Wide Web.

- a. **For latest versions available as of an enrollment effective date.** For the latest version of any product available on or before the enrollment effective date, the product use rights in effect on the enrollment effective date for that product and version apply.
- b. **For versions and products that become available after an enrollment effective date.** For any version of any existing product, or any new product, first made available after the enrollment effective date, the product use rights in effect on the date on which the version or product first becomes available apply.
- c. **For versions of a product that predate the latest version available as of an enrollment effective date.** If an enrolled affiliate is using an earlier version of any product licensed under its enrollment that became available prior to the version that was current on the enrollment effective date, the enrolled affiliate's use of the earlier version will be governed by the product use rights that would apply if the enrolled affiliate were using the version licensed under the enrollment, or in the case of Software Assurance or L&SA, the latest version that is or becomes available at any time during its enrollment. If that earlier version contains software components that are not included in the latest version, then use of those components will be governed by the product use rights for that earlier version specific to those components.
- d. **Cross-language use rights.** If an enrolled affiliate is using any different language version of any product licensed under its enrollment, the enrolled affiliate's use of the different language version will be governed by the product use rights for the version licensed under the enrollment.
- e. **Right to reassign Software Assurance coverage to replacement computers.** An enrolled affiliate may reassign Software Assurance coverage ordered for an underlying desktop operating system product installed on one computer to a replacement computer so long as (i) that replacement computer is licensed to run the latest version of the desktop operating system available as of the date of the reassignment, and (ii) the enrolled affiliate removes from the original computer any desktop operating system upgrades that were installed under the reassigned Software Assurance coverage. An enrolled affiliate may not otherwise separate Software Assurance coverage or any right to run any version of any product acquired through such coverage from the underlying license for which it is ordered.
- f. **Microsoft's commitment on use rights.** We will not change an enrolled affiliate's product use rights for any version of a product after it becomes available to that enrolled affiliate under its enrollment.
- g. **Alternative product use rights.**

Deploying licenses in academic settings. For each copy of Microsoft Encarta Reference Suite, Microsoft Encarta Deluxe, any title from the Microsoft Mastering Series, Microsoft Visual Basic (Learning, Professional and Enterprise Editions), Microsoft Visual C++ (Standard, Professional and Enterprise Editions), Microsoft Visual J++ (Standard and Professional Editions), Microsoft Visual Studio (Professional and Enterprise Editions), and Microsoft Office Developer an enrolled affiliate licenses for instructional purposes in connection with a class or other educational program, the enrolled affiliate may, as an alternative to deploying the product pursuant to the licensing model described in the product use rights, either (x) permit an unlimited number of student users at its educational institution to run the product on a single computer or similar device, provided that all such users comply

with all other terms of this agreement; or (y) if the enrolled affiliate has licensed multiple copies of the product, then, at any time, its students or faculty may run as many copies of the product as it has licensed copies, provided that those users comply with all other terms of this agreement. If the anticipated number of users of the product will exceed the number of copies the enrolled affiliate has licensed, it must have a reasonable mechanism or process in place to ensure that the number of persons running the product at any given point in time does not exceed the number of copies licensed.

- h. Work at home product use rights.** For each copy of Microsoft Office Standard and Microsoft Office Professional an enrolled affiliate licenses, the primary user (who may be any of your faculty, staff or other employee users but not any student user who is not also an employee user) of the computer or similar device on or from which such product is run may also run a second copy, during the term of this agreement (including any renewals) for work-related purposes only, from either a laptop or desktop computer that he or she owns or leases.

For each (i) copy of Microsoft Windows 2000 Professional or Terminal Services Client Access License and (ii) Windows 2000 Server Client Access License that an enrolled affiliate licenses, the faculty, staff or other employee user (but not any student user who is not also an employee user) of the computer or similar device given the Terminal Services access may, during the term of this agreement for work-related purposes only, also access the Terminal Services of Windows 2000 Server, from either a laptop or desktop computer that he or she owns or leases.

For each (i) Terminal Services 2003 Client Access License and (ii) Windows 2003 Server Client Access License that an enrolled affiliate licenses, the faculty, staff or other employee user (but not any student user who is not also an employee user) of the computer or similar device given the Terminal Services access may, during the term of this agreement for work-related purposes only, also access the Terminal Services of a Windows 2003 Server from either a laptop or desktop computer that he or she owns or leases.

You and your affiliates must make reasonable efforts to ensure that faculty, staff or other employee users delete and remove such copies from the temporary memory (RAM) and permanent memory (e.g. hard disk) of their computers at the end of the term of this agreement.

i. Redistribution of Software Updates to Students.

- (i) **License Grant.** From time to time we may make available to the general public additional or replacement code of any portion of our licensed software products without a fee ("Software Updates"). We grant you a limited, non-exclusive, royalty-free, non-assignable, non-transferable, revocable license to distribute the Software Updates to your students in accordance with the terms of this Section 7(i). Your students must use the Software Updates solely for their personal benefit in accordance with the end-user license agreement with us ("EULA") included with each Software Update.

- (ii) **Redistribution of Software Updates.** You may redistribute Software Updates to your students (1) by electronic means provided that your method of electronic distribution is adequately licensed and incorporates access control and security measures designed to (a) prevent modification of the Software Updates and (b) prevent access by the general public or (2) through acquiring authorized copies on fixed media from a fulfillment source approved by us.

- (iii) **Limitations.** You may not: (1) produce or replicate Software Updates on to CDs or other distributable storage media, (2) combine the Software Updates with other non-Microsoft software; (3) distribute any Software Updates as a stand-alone component via email attachment; (4) charge for the Software Updates, but you may recover any reasonable costs incurred in providing the updates to your students; (5) remove, modify, or interfere with the EULA or the EULA acceptance functionality included by us with any Software Update; or (6) alter the Software Updates in any way. We are not responsible for any cost related to the acquisition, distribution or recall of the Software Updates.

- (iv) **Tracking and Recall; Replacement Software Updates.** You must track the quantity and method of distribution of the Software Updates by means that will allow you to provide notice of a recall and offer replacements as provided in this subsection. You agree to stop redistributing Software Updates within 10 days of receipt of a notice of recall from us, and within 30 days of that notice you agree to (1) return to us or destroy all copies of Software Updates in your possession, and (2) notify your students of the recall by same or similar means in which they were notified of the availability of the Software Updates.

If we make available to you a replacement Software Update, you agree to make the replacement available to your students, within 10 days of receipt, in the same quantity and method of distribution as you made the original Software Update available. Your distribution of replacement Software Updates is subject to the same conditions and restrictions as Software Updates under this section.

- (v) **No Warranties; Exclusion of Indirect, Special, Incidental, Consequential and Certain Other Damages.** Notwithstanding anything to the contrary in this agreement, and to the extent permitted by law, Software Updates you redistribute to your students are provided "as-is" without any warranties. You acknowledge that the provisions of this paragraph with regard to the Software Updates are reasonable having regard to, among other things, the fact that they are complex computer software and their performance will vary depending upon hardware, platform and software interactions and configurations.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES THAT ARISE OUT OF OR ARE IN ANY WAY RELATED TO YOUR REDISTRIBUTION OF THE SOFTWARE UPDATES TO YOUR STUDENTS. FURTHERMORE, IN NO EVENT SHALL WE BE LIABLE FOR ANY SUCH DAMAGES BASED DIRECTLY OR INDIRECTLY UPON THE PROVISION OF SOFTWARE UPDATES OR UNAVAILABILITY OF SOFTWARE UPDATES -- INCLUDING WITHOUT LIMITATION, DAMAGES DUE TO BUSINESS INTERRUPTION, LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITY, LOSS OF DATA AND THE LIKE, FAILURE TO MEET ANY DUTY, OR NEGLIGENCE.

- (vi) **Limitation of Liability.** With respect to your redistribution of the Software Updates, the Limitation of Liability provisions in Section 14 of this agreement shall apply in those situations in which you or an enrolled affiliate have a right to claim damages or payment from us.

- (vii) **No Support.** Software Updates you redistribute to your students are provided without any support obligation by us, including any benefits accruing from Software Assurance.

8. Software Assurance Membership.

Each enrolled affiliate that commits to obtaining either L&SA or Software Assurance for all copies of all products licensed within a designated product pool throughout the term of its enrollment (including any renewal) qualifies for Software Assurance Membership. Membership may entitle the enrolled affiliate to special benefits. Enrolled affiliates that make the commitment for more than one pool may be entitled to further benefits. Each enrolled affiliate that elects to become a Software Assurance Member must indicate its selection of the Software Assurance Membership option, and the product pool(s) for which it is making the required commitment, on its enrollment. Software Assurance Membership benefits may be subject to additional terms and conditions. A description of Software Assurance Membership benefits and additional details is available in the Product List or from an enrolled affiliate's reseller or Microsoft account manager.

9. Making copies of software.

- a. **Copies necessary for internal deployment.** Each enrolled affiliate may make as many copies of the products licensed as necessary to distribute the products to its users. All copies of any product must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source acquired from or made available by a Microsoft approved fulfillment source for that product. Each enrolled affiliate may also have a third party make or distribute copies in its place, but the enrolled affiliate is responsible

for third-party actions to the same extent it would be if the third party were its employee. You and your affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement.

- b. Copies for training, evaluation and back-up.** During the term of its enrollment, each enrolled affiliate and any affiliate to which it sublicenses may (i) run up to 20 complimentary copies of any product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product for a 60-day evaluation period; and (iii) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.
- c. Re-imaging rights.** If an enrolled affiliate or any affiliate to whom it sublicenses has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this program, it may use copies made from the media provided under the enrolled affiliate's enrollment in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.
 - (i) The enrolled affiliate must have obtained a separate license from the separate source for each copy being replaced.
 - (ii) The product, language, version and all components (in the case of product suites) of the copies made from the media provided under its enrollment must be identical to the product, language, version and all components of the copies they replace.
 - (iii) In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined here, the product type (e.g. upgrade or full license) of the copies made from the media provided under its enrollment must be identical to the product type of the copies they replace. However, an enrolled affiliate may use copies of a desktop operating system made from the media provided under its enrollment in place of copies of the same desktop operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

The use of any copies made under these reimaging rights is subject to the terms and use rights provided with the copies being replaced, and nothing in this subsection creates or extends any warranty or support obligation.

10. Transferring licenses.

- a. How to transfer.** An enrolled affiliate may transfer perpetual licenses ordered under an enrollment to an affiliate, or to an eligible education customer in connection with a divestiture of an affiliate or an operating division of the enrolled affiliate or any of its affiliates, a merger, or a consolidation as long as the enrolled affiliate provides us with prior written and signed notice, on a form that we provide, that includes: (i) the applicable enrollment number; (ii) the quantity of licenses being transferred by product and version; (iii) the name, address and contact information of the transferee; and (iv) any other information that we may reasonably request.

For all other transfers of licenses, our written consent is required. We will not withhold our consent unreasonably. No license transfer will be valid unless the enrolled affiliate provides to the transferee, and the transferee accepts in writing the applicable product use rights, use restrictions, limitations of liability, and the transfer restrictions in this section. Any transfer made in violation of the requirements or restrictions in this section will be void.

- b. When transfers are not permitted.** An enrolled affiliate may not transfer (i) licenses on a short-term basis (either to third parties or by reassignment to different users or devices internally), (ii) temporary rights to use products, (iii) Software Assurance coverage (iv) perpetual licenses for any version of any product acquired through Software Assurance separately from the underlying perpetual licenses for which that Software Assurance coverage was ordered; or (v) upgrade licenses for a desktop operating system product

separately from the underlying operating system license or from the computer system on which the product was first installed.

11. Confidentiality.

To the extent permitted by applicable law, the terms and conditions of this agreement are confidential. Neither you nor we will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than your or our affiliates or agents, or to your designated or prospective resellers who: (a) have a need to know such information in order to assist in carrying out this agreement; and (b) have been instructed by you or us that all such information is to be handled in strict confidence.

12. Warranties.

- a. **Limited product warranty.** We warrant that each version of a product will perform substantially in accordance with our user documentation. This warranty is valid for a period of one year from the date an enrolled affiliate first runs a copy of the version. Any warranties imposed by law concerning the products are limited to the same one year period. This warranty does not apply to components of products that an enrolled affiliate is permitted to redistribute under applicable product use rights, or if failure of the product has resulted from accident, abuse or misapplication. If the enrolled affiliate notifies us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return the price paid for the product or (ii) repair or replace the product. This is your exclusive remedy for any failure of any product to function as described in this paragraph.
- b. **NO OTHER WARRANTIES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS OR RELATED MATERIALS. WE WILL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN SUCH AGREEMENT.

13. Defense of infringement and misappropriation claims.

We will defend you against any claims made by an unaffiliated third party that any commercial product or fix infringes its patent, copyright, or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act except in claims arising under any license agreement governed by the laws of any jurisdiction outside the United States, in which "misappropriation" will mean intentionally unlawful use and "trade secret" will mean "undisclosed information" as specified in Article 39.2 of the TRIPs agreement.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) your running of the product or fix after we notify you to discontinue running due to such a claim; (ii) your combining the product or fix with a non-Microsoft product, data or business process; (iii) damages attributable to the value of the use of a non-Microsoft product, data or business process; (iv) your altering the product or fix; (v) your distribution of the product or fix to, or its use for the benefit of, any third party; (vi) your use of our trademark(s) without express written consent to do so; or (viii) for any trade secret claim, your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. You will be responsible for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a product or fix, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing product or fix, or (ii) modify the product or fix or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the allegedly infringing product or fix immediately. If, as a result of an infringement claim, your use of a product or fix is enjoined by a court of competent jurisdiction, we will, at our option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate the license for the infringing product or fix.

If any other type of third party claim is brought against you regarding our intellectual property, you must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this section. This Section 13 provides your exclusive remedy for third party infringement and trade secret misappropriation claims.

14. Limitation of liability.

a. Limitation on direct damages. There may be situations in which you or an enrolled affiliate have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claims, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you or the enrolled affiliate have paid for the product giving rise to the claims. In the case of free product or code you or an enrolled affiliate are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you or the enrolled affiliate will not exceed US\$5000, or its equivalent in local currency. The limitations contained in this paragraph will not apply with respect to the following in connection with the performance of this agreement:

(i) our obligations under Section 13 to defend third party claims of patent, copyright or trademark infringement or trade secret misappropriation, and to pay damages resulting from any final adjudication (or settlement to which we consent) of such claims;

(ii) our liability for damages for gross negligence or willful misconduct, to the extent caused by us or our agent and awarded by a court of final adjudication; and

(iii) our obligations under section 11 (confidentiality).

b. No liability for certain damages. To the maximum extent permitted by applicable law, neither party nor any of its affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with any agreement, product, fix or service, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights.

c. Application. Except as specified expressly in this Section 14, the limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

15. Verifying Compliance.

You must keep records relating to the products you and any affiliate run. We have the right to verify compliance, at our expense, during the term of this agreement and for a period of one year thereafter. To do so, we will engage an independent accountant from an internationally recognized firm of chartered accountants, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, we may require you to accurately complete our self-audit questionnaire relating to the products you and

any affiliates use. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and acquire the necessary additional licenses as single academic retail licenses within 30 days. If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification of the same entity for at least one year. We and our auditors will use the information obtained in compliance verification only to enforce our rights and to determine whether you are in compliance with the terms of this agreement. By invoking the rights and procedures described above, we do not waive our rights to enforce this agreement or to protect our intellectual property by any other means permitted by law.

16. Term, termination and renewal.

- a. Term.** This agreement will remain in effect for 36 full calendar months following the effective date unless it is renewed or terminated earlier as described below. All enrollments entered into under this agreement will expire or terminate upon the expiration or termination of this agreement, unless terminated earlier as described below.
- b. Termination.** Either party to an enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay amounts owed. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure. If we give such notice to an enrolled affiliate, we will give you a copy of that notice as well and you agree to assist in attempting to resolve the problem. If the problem also affects other enrollments and cannot be resolved between you and us within a reasonable period of time, we may also terminate this agreement and all other enrollments under it. If an enrolled affiliate ceases to be your affiliate or ceases to be an eligible education customer, you must promptly notify us of this fact, and we may terminate its enrollment.

If no orders are received under an enrollment, the enrollment will be terminated at the anniversary.

- c. Effect of termination or expiration.** Upon expiration or termination of this agreement or any enrollment, the enrolled affiliate must order licenses for all copies of products it or its affiliates have run under its enrollment for which the enrolled affiliate has not previously submitted an order. Except as provided in the next paragraph, in the event of termination all unpaid installments of the price for any licenses will immediately become due and payable, and the enrolled affiliate will be entitled to perpetual licenses only after all such payments have been made.

Early termination. If an enrolled affiliate terminates its enrollment as a result of our breach, or if we terminate its enrollment because it has ceased to be your affiliate, then the enrolled affiliate will have the following options:

- i) It may immediately pay the total remaining amount due, including all installments, in which case the enrolled affiliate will have perpetual licenses for all copies of the products it has ordered, or
 - ii) It may pay only amounts due and payable as of the termination date, in which case the enrolled affiliate will have perpetual licenses for (a) all copies of all products for which payment has been made in full, and (b) the number of copies of products for which payment has been made in installments that is proportional to the amount that has been paid as of the termination date.
- d. How to renew this agreement.** We will provide you with 60 days prior written notice of expiration of the initial agreement or renewal term advising you of your renewal options. You may have the option to renew this agreement for one term of 12 or 36 full calendar months. When you renew this agreement all enrollments under this agreement are automatically renewed. We and our affiliates will not unreasonably refuse to renew this agreement or reject any renewal order. However, we may make a change to this program that will make it necessary for you and your enrolled affiliates to enter into new agreements and enrollments.

Placing renewal orders. If an enrolled affiliate wishes to renew Software Assurance for any copies previously covered under its enrollment, it must submit a renewal order for those copies for the entire renewal term within 30 days after the previous term expired. Each renewal term will start the day following expiration of the prior term. Upon renewal of this agreement, an enrolled affiliate will not be eligible to order Software Assurance coverage for any copies of any products for which it obtained only a License without first acquiring L&SA.

Consequences of non-renewal. If you elect not to renew this agreement, or if an enrolled affiliate elects not to renew Software Assurance coverage for any copies of any product licensed under an enrollment, and it otherwise allows Software Assurance for those copies to lapse, then the enrolled affiliate will not be permitted to order Software Assurance for those copies later without first acquiring L&SA.

17. *Miscellaneous.*

- a. Notices to us.** Notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

<i>Notices to Microsoft should be sent to:</i>	<i>Copies should be sent to:</i>
Microsoft Ireland Operations Limited Atrium Building Block B Carmenhall Road Sandyford Industrial Estate Dublin 18 Ireland Attention: EOC Program Operations Dept.	Microsoft EMEA HQ Law and Corporate Affairs Cœur Défense Tour B La Défense 4 100, Esplanade du Général de Gaulle 92932 Paris La Défense Cedex France

- b. Assignment.** This agreement may be assigned by either party only to an affiliate, but assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement or any enrollment, it must notify the other party of the assignment in writing.
- c. Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend this agreement to give effect to the stricken clause to the maximum extent possible.
- d. Waiver.** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- e. Force Majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.
- f. Non-exclusivity.** This agreement and all enrollments under it are non-exclusive. Nothing contained in this agreement or any such enrollment requires you to license, use or promote Microsoft software or services exclusively. You may, if you choose, enter into agreements with other parties to license, use or promote non-Microsoft software or services.
- g. Dispute resolution.** If we bring an action to enforce this agreement, we will bring it in the jurisdiction where your contracting affiliate has its headquarters. If you bring an action to enforce this agreement, you will bring it in Ireland. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.
- h. Entire agreement.** The documents identified on the cover page to this agreement constitute the entire agreement concerning the subject matter, and supersede any prior or contemporaneous communications. In the case of a conflict between any of these documents

that is not resolved expressly in the documents, their terms will control in the following order: (i) these terms and conditions and the accompanying cover and contact page(s) (except under circumstances where an outsourcer enrollment is used, in which case the terms of the outsourcer enrollment control over these terms and conditions); (ii) the Product List; (iii) the product use rights; and (iv) all other enrollments under this agreement. The terms of any purchase order or any general terms and conditions you or your affiliates maintain do not apply. This agreement (except the Product List and the product use rights) can be changed only by an amendment signed by both parties. If you are a governmental entity or affiliated with a governmental entity, you represent to us that no term or condition is made a part of this agreement by any statute, rule or regulation promulgated by you or the governmental entity with which you are affiliated that is not expressly set forth in this agreement, and that no such term or condition nor any term or condition of this agreement shall be binding upon any subcontractor or supplier by operation of any statute, rule or regulation promulgated by you or the governmental entity with which you are affiliated unless the subcontractor or supplier expressly agrees to such term or condition. You acknowledge that this representation was a material inducement to our agreement.

- i. **Survival.*** Provisions regarding product use rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.
- j. **Independent contractors.*** Resellers are independent contractors who act in their own name and for their own account; and they have no authority to bind or impose any obligation or liability upon us.
- k. **Applicable law.*** The terms of this agreement will be governed by and construed in accordance with the laws of Ireland.
- l. **Agency.*** The parties hereby acknowledge and agree that the benefit of certain of the provisions of this agreement are expressed to be for the benefit not only of the entities that have signed those agreements, but also for their affiliates. In entering into this agreement and such license and services agreements, we each do so not only in our own right, but also as trustee and agent for our respective affiliates.

Academic Select Volume Forecast Form

(to be completed with your reseller or Microsoft account manager)

You forecast that during the initial term of this agreement you and your affiliates will acquire at least 1,500 points in each of the product pool(s) marked below to qualify for academic level pricing within such product pool(s). Each product offering is assigned the number of points specified in the Product List. Note that academic pricing is established on a per pool basis. You do not need to acquire products from all pools, but you must acquire at least 1,500 points in each pool for which you wish to qualify for academic level pricing.

Mark below those product pool(s) from which you and your affiliates expect to earn at least 1,500 points during the initial term of this agreement.

Product Pools	✓
Applications	<input checked="" type="checkbox"/>
Systems	<input type="checkbox"/>
Servers	<input type="checkbox"/>

Schedule A

Microsoft Qualified Educational User Definition (EMEA)

The following are eligible to acquire Microsoft Academic Edition (AE) products in the programs indicated and are defined as qualified educational users. Microsoft reserves the right to review the status of any customer or proposed customer as a qualified educational user.

QUALIFIED EDUCATIONAL USERS:		ELIGIBLE PROGRAMS:
A	Educational Institution	
(i)	An academic or vocational institution accredited by the applicable governmental regulatory agency in the country in which the Educational Institution has its principal offices: or	AE Full Packaged Product Academic Open Academic Select School Agreement (primary or secondary education sector only) Campus Agreement (higher education sector only)
(ii)	A not-for-profit non-academic and/or non-government recognized full-time teaching institution/organization.	AE Full Packaged Product Academic Open Academic Select
B	Administrative Offices of an Educational Institution	
	The local, regional or national administrative offices of one or more Educational Institutions described in A (i) above.	AE Full Packaged Product Academic Open Academic Select School Agreement (primary or secondary education sector) Campus Agreement (higher education sector only)
C	Faculty and Staff	
	Full and Part Time Faculty and Staff of an Educational Institution as defined in Section A (i) above.	AE Full Packaged Product Only
D	Students	
	Full and Part Time Matriculated Students of an Educational Institution as defined in section A (i) and Full Time Matriculated Students of an Education Institution as defined in section A (ii).	AE Full Packaged Product Only
E	A teaching hospital or medical training school.	
	Those parts, sections or departments of a teaching hospital or medical training school that are dedicated to the teaching of medicine.*	AE Full Packaged Product Academic Open Academic Select
F	Public Libraries	
	A public library that provides basic general library services without charge to all residents of a given community, district or region.	AE Full Packaged Product Academic Open Academic Select
G	Public Museums	
	A public museum organized on a permanent basis essentially for educational or aesthetic purposes that utilizes a professional staff and regularly exhibits tangible objects to the public.	AE Full Packaged Product Academic Open Academic Select
H	Public Research Establishment	
	A public research establishment fully funded by government on a local, national or European level.	AE Full Packaged Product Academic Open Academic Select
I	Charitable Organization	
	A charitable organization which operates on a not-for-profit basis and whose aim is i) the relief of poverty, ii) the advancement of education, iii) the advancement of social and community welfare, iv) the advancement of culture, or v) the advancement of the natural environment.	AE Full Packaged Product Academic Open Academic Select

*A teaching hospital or medical training school is not eligible in the event it is impossible to distinguish between the teaching and non-teaching portions for software licensing purposes.

Microsoft | Volume Licensing**Academic Select Agreement
Amendment**Academic Select Agreement
number
Microsoft to complete

Amendment ID

CTM-

hanig-000

ID Number
Microsoft to complete

This amendment is entered into between the customer and the Microsoft affiliate signing, as of the effective date identified below. All terms used but not defined will have the same meanings as in the Microsoft Academic Select Agreement identified above (the "agreement"). The following terms and conditions amend the terms and conditions of the agreement with respect to the customer identified below and its enrolled affiliates.

The section entitled "Effective date" is replaced with the following:

Effective date. The effective date of this agreement will be March 2006.

Except for changes made by this amendment, all terms of the agreement remain unchanged. By signing below, the parties agree to be bound by the terms of this amendment.

Customer	Contracting Microsoft Affiliate
Name of Entity *	Microsoft Ireland Operations Limited
Ministry of Education	
Signature * Salah A. Elewa	Signature
Printed Name * Dr. Salah Elewa	Printed Name
Printed Title * Technology & Dev. Center Manager	Printed Title
Signature Date * June 18, 2006	Signature Date (date Microsoft affiliate countersigns) 22 JUN 2006
	Effective Date (may be different than our signature date)
	Gonzalo Caro Licensing Specialist

* indicates required field

Please sign two copies of this amendment and send them to your reseller. Your reseller must submit them to the following address by June 2006 at the latest. When the amendment is fully signed, you will receive a confirming copy.

Microsoft Ireland Operations Limited
Atrium Building Block B
Carmen Hall Road, Sandyford Industrial Estate
Dublin 18 - Ireland

Prepared By: